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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,016	12/04/2003	Randall Lane Grimm	ROC920030336US1	7298
30206 7590 01/30/2007 IBM CORPORATION ROCHESTER IP LAW DEPT. 917 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829			EXAMINER BELANI, KISHIN G	
			ART UNIT	PAPER NUMBER
			2109	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/728,016

Applicant(s)

GRIMM ET AL.

Examiner

Kishin G. Belani

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on December 04, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 04, 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **block 419 on page 17, line 25**. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because of the following minor informalities:

- Fig. 4, block 332, change "Code Verified?" to  
-- Credit Signature verified? --
- Fig. 4, block 322, change "Relinguish" to -- Relinquish --
- Fig. 5, block 422, move decision text "N" from the left to the right of the decision block
- Fig. 5, blocks 426-434 are shown as a loopable block set without any decision block to terminate the loop. Please correct.

- Fig. 6, decision block 512 checks for "Resources Unavailable?" The examiner has interpreted the text to check for -- Resources Available? -- Please correct.
- Fig. 6, block 518, change "Relinguish" to -- Relinquish --

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

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- On page 19, line 3 “destination computer 212” is mentioned, but on line 4 “destination computer 222” is mentioned. The examiner has interpreted the text on line 3 to mean  
– source computer 212 –. Please correct.
- On page 19, descriptions of paragraphs 1 and 2 are inconsistent with the flowchart in Fig. 6, blocks 504 and 512. In block 504, is the “Standby Resource Unavailable” at the destination computer? In block 512, should the text read “Resource(s) Available?” instead of “Resource(s) Unavailable?” at the source computer?
- On page 19 line 26, change “access” to – excess –

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 35 and 36** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The “**signal bearing medium**,” in accordance with Applicant's specification may be a **transmission-type medium** (specification page 10 line 28, page 11 line 3). This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical

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devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-4, 6-9, 11, 12, 16-21, 23-25, 27, 28, and 31-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Romero et al. (U.S. Patent Application Publication # 2004/0199632 A1).**

Consider **claim 1**, Romero et al. clearly show and disclose a method for managing usage of a plurality of standby resources included within a plurality of computers, wherein each computer of the plurality of computers includes at least one standby resource of the plurality of resources (Abstract; Fig. 1; paragraph 0012, that describe a method for automatically balancing processors across partitions of a partitioned server using reserve (standby) processors; paragraph 0025, lines 1-4 that

describe a "partition" of a partitioned server as an individual computer), the method comprising:

limiting availability to a first standby resource included within a source computer of the plurality of computers; and programmatically transferring the availability to a second standby resource included within a destination computer of the plurality of computers (paragraph 0037, lines 9-13, that describe how the standby capacity is managed by reducing the capacity of a partition by removing one or more active processors in order to increase the associated reserve processor pool and make a processor available for activation in another partition).

Consider **claim 2**, and **as applied to claim 1 above**, Romero et al. disclose transferring the availability further includes verifying the limiting availability (paragraph 0047, lines 12-18, that disclose an auditing system that verifies the limit of the total number of active processors).

Consider **claim 3**, and **as applied to claim 1 above**, Romero et al. disclose transferring the availability further includes maintaining a physical distribution of the first and second standby resources as between the source and destination computers (paragraph 0042, lines 4-8, which disclose that selection of either active or reserve processor does not cross any of the boundaries of the partitioned server, but are self-contained within respective partitions).

Consider **claim 4**, and **as applied to claim 1 above**, Romero et al. disclose transferring the availability further includes maintaining respective workloads as between the source and destination computers (paragraph 0031, lines 0013-0022, which disclose that a workload manager meets the "Service Level Objective" of maintaining workload balance on each partition by activating and deactivating either active or reserve processors).

Consider **claim 6**, and **as applied to claim 1 above**, Romero et al. disclose limiting the availability further includes generating a request to downgrade the availability (paragraph 0044, lines 0015-0018, which disclose that upon a request from Workload Manager to limit the availability, a partition downgrades one or more of active processors).

Consider **claim 7**, and **as applied to claim 1 above**, Romero et al. show and disclose using an entitlement application computer to manage the usage (Fig. 1, block 14 Workload Manager (not marked but described in paragraph 0028); paragraph 0028, lines 0001-0004, that disclose a Workload Manager interpreted to be an entitlement computer to manage the resources).

Consider **claim 8**, and **as applied to claim 1 above**, Romero et al. disclose limiting the availability further includes generating a request to upgrade the availability (paragraph 0039, lines 0042-0052; paragraph 0044, lines 0018-0021, which disclose



that a Workload Manager may request to increase entitlement for a partition that needs more resources).

Consider **claim 9**, and **as applied to claim 1 above**, Romero et al. disclose limiting the availability further includes generating a signature indicative of the availability (paragraph 0039, lines 0056-0061, which disclose that Workload Manager forms an allocation value interpreted to be a signature indicative of the availability such that the system resources are apportioned based on the allocation values).

Consider **claim 11**, and **as applied to claim 1 above**, Romero et al. disclose limiting the availability further includes determining the first standby resource (paragraph 0013, lines 0007-0011, which disclose identifying a second partition having at least one active processor which is not allocated at the objective level, and deactivating it, interpreted to be the first standby resource within the source computer).

Consider **claim 12**, and **as applied to claim 1 above**, Romero et al. disclose transferring the availability further includes determining the second standby resource (paragraph 0013, lines 0001-0007, which disclose identifying a first partition having at least one reserve processor available for activation to meet service level objectives, interpreted to be the second standby resource within the destination computer).

Consider **claim 16**, Romero et al. disclose an apparatus comprising:

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a source computer including a first standby resource; a destination computer including a second standby resource (Abstract, that describes a system for automatically allocating computing resources in a partitioned server (each partition of which is defined in paragraph 0025, lines 0001-0004 as equivalent to a computer) by activating a reserve processor in one partition and deactivating an active processor in another partition; Fig. 1, block 10 that shows a partitioned server, and block 14 that represents a Workload Manager that includes program code (not marked but described in paragraph 0028)); and program code in communication with at least one of the source and destination computers, the program code configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource (paragraph 0012, lines 0010-0014, that disclose a machine readable medium to perform the functions to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource).

Consider **claim 17**, and **as applied to claim 16 above**, Romero et al. disclose a memory including a record relating to respective availabilities of the first and second standby resources (paragraph 0034, lines 0048-0052, which describe that the Workload Manager 14 receives and has stored information on the number of reserve processors available for allocation to an Active Processor Pool).

Consider **claim 18**, and **as applied to claim 16 above**, Romero et al. disclose an entitlement computer for managing the availability (paragraph 0028, lines 0001-

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0004, that describe a Workload Manager, interpreted to be an entitlement computer for managing the availability).

Consider **claim 19**, and **as applied to claim 16 above**, Romero et al. disclose that the program code initiates verifying the availability (paragraph 0034, lines 0001-0007, that describe an allocator that based on the instructions received from the Workload Manager 14, reallocates resources based on availability).

Consider **claim 20**, and **as applied to claim 16 above**, Romero et al. disclose that the physical distribution of the first and second standby resources remains the same as between the source and destination computers (paragraph 0011, lines 0009-0011, which disclose that automatic allocation of processor reserves is operable even though cells are not able to be migrated dynamically).

Consider **claim 21**, and **as applied to claim 16 above**, Romero et al. disclose that respective workloads as between the source and destination computers is unaffected by the programmatic transfer (paragraph 0031, lines 0013-0022, which disclose that a workload manager meets the "Service Level Objective" of maintaining workload balance on each partition by activating and deactivating either active or reserve processors)

Consider **claim 23**, and **as applied to claim 16 above**, Romero et al. disclose that the program code initiates generating a request to downgrade the availability (paragraph 0044, lines 0015-0018, which disclose that upon a request from Workload Manager to limit the availability, a partition downgrades one or more of active processors).

Consider **claim 24**, and **as applied to claim 16 above**, Romero et al. disclose that the program code initiates generating a request to upgrade the availability (paragraph 0039, lines 0042-0052; paragraph 0044, lines 0018-0021, which disclose that a Workload Manager may request to increase entitlement for a partition that needs more resources).

Consider **claim 25**, and **as applied to claim 16 above**, Romero et al. disclose that the program code initiates generating a signature indicative of the availability (paragraph 0039, lines 0056-0061, which disclose that Workload Manager forms an allocation value interpreted to be a signature indicative of the availability such that the system resources are apportioned based on the allocation values).

Consider **claim 27**, and **as applied to claim 16 above**, Romero et al. disclose that the program code initiates determining the first standby resource (paragraph 0013, lines 0007-0011, which disclose identifying a second partition having at least one active

processor which is not allocated at the objective level, and deactivating it, interpreted to be the first standby resource within the source computer).

Consider **claim 28**, and **as applied to claim 16 above**, Romero et al. disclose the program code initiates determining the second standby resource (paragraph 0013, lines 0001-0007, which disclose identifying a first partition having at least one reserve processor available for activation to meet service level objectives, interpreted to be the second standby resource within the destination computer).

Consider **claim 31**, Romero et al. clearly show and disclose an apparatus comprising:

a processor in communication with both a source computer including a first standby resource and a destination computer including a second standby resource (Abstract; Fig. 1, showing a workload manager 14 (not marked in the figure but mentioned in paragraph 0028) communicating with various partitions (interpreted as source and destination computers with one or more active and reserve resources) in the partitioned server 10. The workload manager along with the program code resident in it is interpreted as a processor; paragraph 0025, lines 1-4 that describe a "partition" of a partitioned server as an individual computer);

and program code executable by the processor and configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource (paragraph 0037, lines 9-13, that describe how the

standby capacity is managed by reducing the capacity of a partition by removing one or more active processors in order to increase the associated reserve processor pool and make a processor available for activation in another partition).

Consider **claim 32**, and **as applied to claim 31 above**, Romero et al. disclose that the program code is further configured to initiate generating a fee associated with the programmatic transfer (paragraph 0047, lines 0012-0018; which disclose an auditing system that calculates the total number of processors and if the number of active processors exceed a limit, a charge is incurred).

Consider **claim 33**, Romero et al. clearly show and disclose an apparatus comprising:

a processor; a first standby resource in communication with the processor; and program code executable by the processor, the program code configured to initiate limiting availability to the first standby resource, wherein the availability is transferred to a second standby resource of a destination computer (Abstract; Fig. 1; paragraph 0025, lines 1-8 that describe a "partition" of a partitioned server as an individual computer. It further discloses that a partition may contain one or more processors (CPUs), which are considered standby resources. A specific case of a single CPU in a partition for a source computer and a second partition of multiple CPUs for a destination computer along with a Workload Manager (interpreted to be a processor with the program code) corresponds to the apparatus cited in the claim).

Consider **claim 34**, Romero et al. clearly show and disclose an apparatus comprising:

a processor; a first standby resource in communication with the processor; and program code executable by the processor, the program code configured to initiate increasing availability to the first standby resource, wherein the availability is transferred from a second standby resource of a source computer (Abstract; Fig. 1; paragraph 0025, lines 1-8 that describe a "partition" of a partitioned server as an individual computer. It further discloses that a partition may contain one or more processors (CPUs), which are considered standby resources. A specific case of a single CPU in a partition for a destination computer and a second partition of multiple CPUs for a source computer along with a Workload Manager (interpreted to be a processor with the program code) corresponds to the apparatus cited in the claim).

Consider **claim 35**, Romero et al. clearly show and disclose a program product comprising:

program code in communication with/at least one of the source and destination computers having access to first and second standby resources, respectively, the program code configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource (Abstract; Claim 9; Fig. 1, showing a workload manager 14 communicating with various partitions (interpreted as source and destination computers with one or more active and reserve

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resources) in the partitioned server 10. The iCOD (Capacity On Demand) scheme referenced in paragraph 0011 is disclosed to be implemented in the program code of the workload manager);

and a signal bearing medium bearing the program code (paragraph 0012, lines 0010-0014, disclosing a machine readable medium with instructions for performing the disclosed invention).

Consider **claim 36**, and as applied to **claim 35 above**, Romero et al. disclose a program product comprising:

the signal bearing medium includes at least one of a recordable medium (paragraph 0012, lines 0010-0014, that disclose a machine readable medium with instructions for performing the disclosed invention)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.



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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 5, 10, 13-15, 22, 26, 29, 30** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Romero et al. (U.S. Patent Application Publication # 2004/0199632 A1)** in view of **Zalewski et al. (U.S. Patent Publication # 6,260,068)**.

Consider **claim 5**, and as applied to **claim 1 above**, Romero et al. show and disclose the claimed invention except that transferring the availability further includes updating an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that is updated to reflect change in the ownership of a resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of updating an entitlement database as taught by Zalewski et al. in the method of Romero et al. in order to keep track of changes in the ownership of resources among various source and destination computers.

Consider **claim 10**, and **as applied to claim 1 above**, Romero et al. show and disclose the claimed invention except that limiting the availability further includes generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code, that is used by the system to indicate the status of a resource for transfer to another partition, while limiting the availability.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while relinquishing or acquiring standby resources as taught by Zalewski et al. in the method of Romero et al. so as to be able to activate the acquired resource at the destination computer and deactivate the relinquished resource at the source computer or vice versa.

Consider **claim 13**, and **as applied to claim 1 above**, Romero et al. show and disclose the claimed invention except that transferring the availability further includes generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code, that is used by the system to indicate the status of a resource for transfer to another partition, while transferring the availability.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while relinquishing or acquiring standby resources as taught by Zalewski et al. in the method of Romero et al. so as to be able to activate the acquired resource at the destination computer and deactivate the relinquished computer at the source computer respectively.

Consider **claim 14**, and **as applied to claim 1 above**, Romero et al. show and disclose the claimed invention except that transferring the availability further includes storing data associated with the transferring.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure that holds the current ownership status of each transferable resource. The configuration tree structure is updated to store the change in the ownership of a transferable resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preserve the latest status of ownership after transferring the availability by storing the relevant data as taught by Zalewski et al. in the method of Romero et al. in order to preserve the ownership before the transfer of the transferred resource, so that the resource can later be reclaimed by the original owner, as well as showing the current ownership of the transferred resource.

Consider **claim 15**, and **as applied to claim 1 above**, Romero et al. show and disclose the claimed invention except that transferring the availability further includes determining an availability status using an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that holds the current ownership status of each transferable resource. The configuration tree structure is reviewed while transferring the availability to ascertain the current ownership status of transferable resources.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of reviewing the current status of ownership of any transferable resources among various source and destination computers as taught by Zalewski et al. in the method of Romero et al. in order to determine if the particular resource is critical to the operation of the current owner and therefore not to be relinquished or may be available for transfer if on standby status.

Consider **claim 22**, and **as applied to claim 16 above**, Romero et al. show and disclose the claimed invention except that the program code initiates updating an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that the program code updates to reflect change in the ownership of a resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of updating an entitlement database in the program code as taught by Zalewski et al. in the method of Romero et al. in order to keep track of changes in the ownership of resources among various source and destination computers.

Consider **claim 26**, and **as applied to claim 16 above**, Romero et al. show and disclose the claimed invention except that the program code initiates generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code that is used by the system to indicate the status of a resource for transfer to another partition.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while

relinquishing or acquiring standby resources as taught by Zalewski et al. in the apparatus of Romero et al. so as to be able to activate the acquired resource at the destination computer and deactivate the relinquished computer at the source computer respectively.

Consider **claim 29**, and **as applied to claim 16 above**, Romero et al. show and disclose the claimed invention except that the program code initiates storing data associated with the programmatic transfer.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure that holds the current ownership status of each transferable resource. The configuration tree structure is updated to store the change in the ownership of a transferable resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preserve the status of ownership after transferring the availability by storing the relevant data as taught by Zalewski et al. in the apparatus of Romero et al. in order to preserve the ownership before the transfer of the transferred resource, so that the resource can later be reclaimed by the original owner, as well as showing the current ownership of the transferred resource.

Consider **claim 30**, and **as applied to claim 16 above**, Romero et al. show and disclose the claimed invention except that the program code initiates determining an availability status using an entitlement database.

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In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that holds the current ownership status of each transferable resource. The configuration tree structure is reviewed while transferring the availability to ascertain the current ownership status of transferable resources.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of reviewing the current status of ownership of any transferable resources among various source and destination computers as taught by Zalewski et al. in the apparatus of Romero et al. so as to make a determination as to which resources can be transferred when needed elsewhere.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent: 5,938,732 B1, inventor: Lim et al., issued: 08/17/1999

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kishin G. Belani whose telephone number is (571) 270-1768. The Examiner can normally be reached on Monday-Thursday from 6:30 am to 5:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Perez Gutierrez can be reached on (571) 270-1767 or (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.



Application/Control Number: 10/728,016

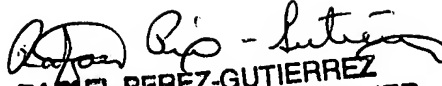
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*Kishin G. Belani*

K.G.B./kgb

December 18, 2006

  
RAFAEL PEREZ-GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
1/23/07